

K-C Docket No. 19,288

Serial No. 10/749,366

Response to Office Action Dated October 18, 2007

**Remarks**

Claims 3, 5, 6, 8, 9, 12, 13, 14, 17, 19, 22, 24, 25, 26, 27, 30, 31, 32, 35, 36, 39, 41, 42, 44, 45, 48, 49, 50, 53, and 54 were previously canceled. Claim 42 is objected to because claim 42 is listed as "canceled" and "original" in the listing of claims filed October 4, 2007. Claim 42 is corrected to read "canceled". Thus, claims 1, 2, 4, 7, 10, 11, 15, 16, 18, 20, 21, 23, 28, 29, 33, 34, 37, 38, 40, 43, 46, 47, 51, 52, and 55 are presented for Examiner Kidwell's consideration.

Claims 1, 20 and 37 have been amended to further require that the opening has a length that is 10% to 90% of the garment length. Support for this amendment can be found throughout the specification including page 12, lines 5-6. No new matter has been added.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and remarks and the following responses is respectfully requested.

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**Response to Rejections**

By way of the Office Action mailed October 18, 2007, claims 1-2, 4, 7, 10-11, 15-16, 18, 20-21, 23, 28-29, 33-34, 37-38, 40, 42-43, 46-47, 51-52, and 55 stand rejected under 35 U.S.C. § 103 as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent No. 5,681,302 to Melbye et al. (hereinafter "Melbye") and further in view of U.S. Patent No. 5,462,537 to Carr et al. (hereinafter "Carr"). This rejection is respectfully traversed as it may apply to the currently amended claims.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references must teach or suggest all the claim limitations. M.P.E.P. § 2142, 2143. If one or more of the criteria are missing, the Examiner has failed to establish a *prima facie* case of obviousness and the rejection should be withdrawn.

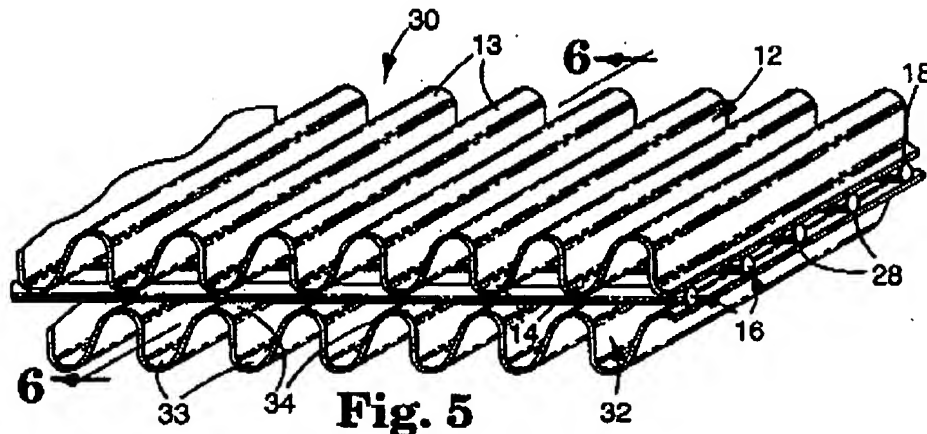
No *prima facie* case of obviousness has been established because Melbye and Carr, alone or in combination, do not teach or suggest all the claim limitations. Specifically, Melbye and Carr fail to teach or suggest a disposable garment having "an elastic inner layer wherein the elastic inner layer defines an opening located in an internal position to the elastic inner layer perimeter and wherein the opening is a slit or aperture through a bodyfacing surface of the elastic inner layer and wherein the opening has a length that is 10% to 90% of the garment length" as required by Applicants' currently amended claims 1, 20, and 37.

Melbye teaches an elastic sheet-like composite 30 having a multiplicity of generally parallel elongated strands 16 of resiliently elastic thermoplastic material thermally bonded to a first sheet 12 and a second sheet 32 as illustrated in Figure 5 (reproduced below) and described at column 10: lines 3-60.

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The Examiner states on page 3 of the Office Action that Melbye provides a disposable garment, the disposable garment comprising: an outer layer and an elastic inner layer (Figure 5), wherein the elastic inner layer has the claimed perimeter and opening (col. 4, lines 20-46) as shown in Figure 5. Furthermore, the Examiner states on page 4 that

With respect to the applicant's argument that Melbye does not teach or suggest a disposable garment having an elastic inner layer wherein the elastic inner layer defines an opening located in an internal position to the elastic inner layer perimeter and wherein the opening is a slit or aperture through a bodyfacing surface of the elastic inner layer, the examiner disagrees. Melbye discloses such a structure in col. 4, lines 20-46.

Applicants respectfully disagree. However, in an effort to expedite prosecution, Applicants have amended claims 1, 19, and 37 to further require that the opening is a slit or aperture through the bodyfacing surface of the elastic inner layer and the opening has a length that is 10% to 90% of the garment length. Thus, even assuming, arguendo, that Melbye discloses slits or apertures through the bodyfacing surface of the elastic inner layer, as asserted by the Examiner, these slits or apertures clearly do not have a length that is 10% to 90% of the garment length as required by the claims. Therefore, Melbye does not teach or suggest all the claim limitations.

The addition of Carr does not cure this defect. Therefore, no prima facie case of obviousness has been established as to claims 1, 20, and 37 and the rejection as to these

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claims should be withdrawn for at least this reason. Likewise, the remaining claims depend either directly or indirectly from claims 1, 20, or 37 and are patentably distinct over the combination of Melbye and Carr for at least the same reason. The rejection as to these claims should also be withdrawn.

#### **Claims 11, 29, 47**

Claims 11, 29, and 47 further require that the elastic inner layer be liquid impermeable. The Examiner merely refers to the abstract and figures of Melbye to reject these claims. Applicants are unable to find any teaching in the abstract or figures of Melbye to suggest that the elastic inner layer is liquid impermeable. Applicants respectfully request that the Examiner withdraw this rejection for this additional reason or provide more specificity regarding this rejection.

#### **Claims 10, 28 and 46**

Claims 10, 28, and 46 further require that the elastic inner layer be elastic in both a longitudinal direction and a lateral direction of the disposable garment. The Examiner refers to col. 4, lines 20-60 of Melbye to reject these claims. Applicants are unable to find any teaching in col. 4, lines 20-60 of Melbye to suggest that the elastic inner layer is elastic in both the longitudinal direction and a lateral direction as required by the claims. It appears that the material of Melbye is elastic in only the one direction defined by the elongate strands 16. Applicants respectfully request that the Examiner withdraw this rejection for this additional reason.

#### **Claims 15, 16, 33, 34, 51, 52**

Claims 15, 16, 33, 34, 51, 52 further require that either the outer layer width be greater than the elastic inner layer width or the outer layer length be greater than the elastic inner layer length. The Examiner contends "that any length or portion thereof may be considered in order to meet the claimed limitation." Applicants respectfully disagree with the sufficiency of this rejection. Specifically, Applicants' specification describes having an elastic inner layer that is smaller than the outer layer to provide a snug fit against the body

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of the wearer while also providing volume for containment. (See e.g., page 13, lines 1-28). Melbye does not teach or suggest inner and outer layers having different widths or lengths. Applicants respectfully request that the Examiner withdraw this rejection for this additional reason.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (920) 721-3016.

Respectfully submitted,

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